



Office of Law Enforcement Oversight (OLEO)

Date: December 14, 2020

To: Sheriff Mitzi Johanknecht, King County Sheriff's Office (KCSO)

From: Adrienne Wat, Interim Director, Office of Law Enforcement Oversight (OLEO)

Re: Body-Worn Camera and In-Car Video Policy

OLEO has reviewed KCSO's proposed policy on Body-Worn Camera and In-Car Video. In preparation for making recommendations for changes to the policy, OLEO reviewed Body-Worn Camera (BWC) and In-Car Video (ICV) policies in other jurisdictions, and the International Association of Chiefs of Police (IACP) and American Civil Liberties Union (ACLU) model policies on Body-Worn Cameras. OLEO's recommendations also consider the issues in the memo sent to KCSO on June 18, 2020 by its Community Advisory Committee for Law Enforcement Oversight (CACLEO) and raised by community members during the October 21, 2020 joint Not This Time (NTT) and CALCEO conversation with KCSO.

OLEO recommends several changes to the policy, included in the marked-up version attached to this memo starting on page 6. The attached version is also presented in a restructured format to address the flow of the policy. We highlight the main recommendations in this memo:

Recommendation 1 – Policy Structure

Restructure the policy and place each provision under one of four designated sections:

- I. Purpose and Scope*
- II. Using and Managing the BWC/ICV*
- III. Recording with the BWC/ICV*
- IV. Reviewing and Documenting BWC/ICV Recordings*

The revised policy structure prevents redundancy by placing similar provisions in the same section, making the policy easier to navigate and understand.

OLEO also suggests removing the section titled “Violations of Policy” that describes discipline and counseling related to BWC/ICV misconduct. The exceptions to discipline are outlined under several provisions in the policy, including when there are observations of minor misconduct unrelated to the purpose for the review and within the activation amnesty provision. Similarly, the explanation that counseling will be provided for observations of minor misconduct is addressed under the “Supervisor Responsibilities” provision of the policy.

Additionally, removing the discipline and counseling provisions in the BWC/ICV policy prevents conflict with any intent requirements under General Orders Manual Chapter 3, Rules of Conduct, and precludes subjective interpretation of what is considered “repeated” by the department that could result in disproportionate discipline.

Recommendation 2 – Random Review of BWC/ICV Recordings

Lift the prohibition of random review of BWC/ICV recordings and revise to:

“A designated independent auditor shall randomly review BWC/ICV recordings on a monthly basis to ensure that the equipment is operating properly, and to assess:

- a. Deputy performance and training needs;*
- b. Policy Compliance; and*
- c. Consistency between written reports and video files.*

If, in the course of viewing BWC/ICV recordings, minor acts of misconduct unrelated to the original reason for viewing the recordings are discovered, they will not result in discipline or a sustained finding. However, such acts may result in a training referral or counseling, mentoring, and/or coaching and may be included in an employee’s performance evaluation.”

OLEO agrees that supervisors should not randomly review recordings of their employees. Doing so could be problematic because a supervisor’s decision to randomly review and determination on what they consider an issue could be partial and unfair across their employees. However, random review of recordings by a designated civilian is an opportunity to enhance both internal and public perceptions of legitimacy and transparency. When minor acts of misconduct are identified, the auditor can notify deputies’ supervisors who, in turn, can provide corrective counseling and training to efficiently address the misconduct and attempt to prevent future acts of a similar nature. Additionally, the auditor can analyze policy application and how it aligns with the intention behind written policy. Audit results will empower KCSO to provide data informed training leading to increased adherence to policy and enhanced public service.

Recommendation 3 – BWC/ICV Activation

Revise the provision under Activation of BWC/ICV upon Initial Involvement of Incident to:

“BWC. Deputies shall activate their BWC before civilian contact occurs for all calls for service, as well as for all enforcement, community caretaking, and investigative contacts with civilians, even when the event is out of view of the camera. Such contacts include but are not limited to:

- 1. Investigations and investigative contacts*
- 2. Dispatched calls (starting before the deputy arrives on the call to ensure adequate time to turn on cameras).*
- 3. Traffic and Terry stops*
- 4. On-view infractions and criminal activity*
- 5. Vehicle eluding/pursuits*
- 6. Arrests and detentions*
- 7. Assessment or evaluation for a psychiatric detention.*

8. *Searches of vehicles, persons, or premises*
9. *Serving a search or arrest warrant*
10. *Placing a suspect in, removing a suspect from, or checking on a suspect in a holding cell.*
11. *Transporting any detained or arrested citizen.*
12. *Any other contact, event or activity where the member believes recording has value.*
13. *Upon the order of a higher-ranking member.”*

Providing a more descriptive list of situations that require the use of a BWC/ICV allows for clarity when training deputies and when educating community members about use requirements. Setting a clear expectation for what most types of civilian contacts will look like in practice allows deputies to know upfront how potential incidents will be reviewed for adherence to the BWC/ICV activation policy.

Recommendation 4 – Activation Amnesty

Remove the last sentence in the activation amnesty policy that states:

“Deputies assigned to assignments without a BWC or ICV who work extra shifts on assignments with a BWC or ICV will not be subject to discipline for an unintentional failure to activate the BWC or ICV.”

The first part of the activation amnesty policy states that “[n]o deputy will be subject to discipline for failing to activate a camera for any reason for the first month or 16 shifts, whichever occurs later, after they are assigned to wear a BWC or drive a vehicle equipped with an ICV.” Using this language to grant the same amnesty to all deputies without exceptions will promote consistency in use, in review of recordings, and in training. Per the BWC/ICV training policy, all deputies who use BWC/ICV will have completed the same training and should have the same baseline knowledge of how and when to activate them. Removing this exception creates consistent service that aligns with public expectations.

Recommendation 5 - Discretionary Recording

Remove items 3 and 4 under Discretionary Recording and add an approval process for units to request exceptions to using BWC or ICV:

“In rare circumstances units may perform specific tasks during their normal duties that make using the BWC and/or ICV impractical. Units may request exceptions to recording with BWC and/or ICV, for those specific tasks, from the Sheriff. Any exceptions granted are valid for a term not to exceed one year and may be renewed annually at the discretion of the Sheriff for good cause shown.

Units will request the exceptions by department memorandum outlining the specific tasks and good cause justification. All approvals will be for good cause, which will be set forth in writing and signed and dated expressly by the Sheriff. The Sheriff and affected section commanders will maintain a file of approved exceptions. Section commanders will provide a copy to the Office of Law Enforcement Oversight and may provide copies of the exceptions to the affected personnel under their command.”

Implementing an approval process for exceptions to using the BWC and/or ICV will allow all deputies who have been granted exceptions to have a clear understanding of exactly what activities are exempt from recording and the timeline for which the exception is valid. The process provides concrete expectations to all involved parties before potential civilian contacts and allows those reviewing potential incidents to have a clear understanding of why exceptions were granted. As a result, the proposed process provides proactive transparency that helps ensure that exceptions to BWC and/or ICV use are not being applied arbitrarily and is another strategy to enhance legitimacy of KCSO procedures and deputy decision-making during specific incidents.

Recommendation 6 – Deputy Review

Under “Review of BWC/ICV Recordings,” remove the provision that states, “[a]fter the deputy’s initial statement is written in relation to a use of deadly force, alleged use of excessive force, or a community member complaint, and after an administrative or outside agency investigation is completed, deputies may view their own or other video recording footage related to the incident. After viewing their BWC footage, deputies may then, as needed, write a follow-up statement containing additional pertinent incident information.”

Additionally, remove the “Other Relevant Recordings” provision under “Review of Video” and add the following language to “Review of BWC/ICV”:

“No deputy may view any audio/video recordings prior to completing and submitting the appropriate report(s) and being interviewed by the appropriate investigative unit or prior to submitting a written statement in response to a minor complaint.¹ Once a deputy’s report(s) has been submitted and approved and the deputy has been interviewed by the appropriate investigator, the investigator will show the deputy their recordings. The deputy may also be authorized to view other deputies’ relevant recordings. This will occur prior to the conclusion of the interview process. The deputy will be given the opportunity to provide additional information to supplement their statement and may be asked additional questions by the investigators.

Before reviewing any BWC/ICV footage, deputies shall affirm in their incident report that they are unaware of any complaint related to the incident in the recording.”

Requiring the deputy to provide a recorded interview (or a written statement in response to a minor complaint) prior to viewing associated recordings allows the investigator to gather information from the deputy independent of what is depicted in the video. The deputy’s recollection of an incident may paint a more complete picture of what occurred, and the video evidence should be used to supplement the deputy’s statement. An in-person interview allows for the investigator to determine the areas of inquiry and ask follow-up questions, to which deputies can answer without sole reliance on the BWC/ICV footage.

¹ For the purposes of this memo, OLEO defines “minor complaint” as a non-CARE violation that is typically handled at the precinct level.

Recommendation 7 – Circumstances that Prevent Activation

Remove the language that exerts safety and practicality exceptions before activation requirements throughout the policy. Language such as, “[i]f circumstances prevent activation at the start of an event, the deputy will activate the BWC as soon as practicable,” allows for wide-ranging discretion for what types of circumstances prevent activation and could result in inconsistent application. Using language to affirm when deputies shall activate the BWC/ICV provides more clarity and guidance in practice. During the test and evaluate period, deputies are given an opportunity to provide an explanation when they do not activate their BWC/ICV or why there was a delay in activation. It is then up to their supervisors and/or superiors to determine if the explanation is in alignment with policy and whether there was any willful violation.

The test and evaluate period will provide valuable information about deputies’ determinations, which will inform areas for policy clarification or revision and improve training. Feedback provided by supervisors after review of activation determinations will reinforce requirements and allow for consistent application based on established standards and not on individual perceptions.

Recommendation 8 – Temporary Deactivation of Audio

Remove the provision titled “Temporary Deactivation of Audio Only” that states, “Audio recording contemporaneous with a BWC may be temporarily disabled for conversations with other deputies or persons not involved with the call.” Remove all language that refers to this provision thereafter.

The deactivation of audio contemporaneous with a BWC, even when temporary, has the potential to prevent essential parts of an investigation from being available as evidence. Additionally, granting discretion to deactivate audio may have an unintended consequence of compromising transparency and the subsequent legitimacy of an investigation. If a deputy determines that an audio recording is not necessary to an investigation, they may note this in their incident report and that portion of the recording may be determined to be unnecessary upon review by a supervisor. Without the original audio, however, that determination cannot be made.

Recommendation 9 – Inadvertent/Accidental Recording

Remove the provision titled “Inadvertent/Accidental Recording” which allows recordings to be deleted, and comply with the requirements under “Video Retention,” which requires at least a 60-day retention period for all video recordings, regardless of the circumstance. Maintaining a consistent retention policy regardless of the nature of the recordings allows KCSO to uphold the integrity of investigations in cases where recordings once determined inadvertent or accidental become relevant later in an investigation. A consistent retention period is also an opportunity for KCSO to demonstrate transparency, as policy, and not discretion, will be the sole determinant of whether to retain or delete a recording.

King County Sheriff's Office Body-Worn Camera and In-Car Video Camera Policy

Commented [KK1]: Recommend revising to "King County Sheriff's Office Body-Worn Camera and In-Car Video Policy"

I. Purpose and Scope

The Department has adopted the use of Body-Worn Cameras (BWC) and In-Car Videos (ICV) to record interactions between deputies and members of the public.

Commented [KK2]: Recommend adding "...to enhance public trust and provide transparency into deputy actions."

The Department will continually review this policy and consider changes in best practices, technology, and legal standards.

This policy does not apply to video or audio recordings using equipment other than BWCs or ICVs, nor does it apply to the surreptitious interception of electronic communications for lawful authorized investigative purposes under RCW 9.73.210 and RCW 9.73.230.

DEFINITIONS:

For the purpose of this policy:

1. BODY-WORN CAMERA – a camera system capable of audio and visual recording designed to be worn on the exterior of uniforms and / or equipment.

Commented [KK3]: Recommend revising to "...and/or uniform equipment"

2. IN-CAR VIDEO – a camera system that is mounted in and draws power from a vehicle.

3. CAMERA SYSTEM – means a body worn camera or in vehicle camera.

~~**4. ADVISEMENT** – Statement made by an officer at the outset of using a body camera to record a communication, conversation or interaction with a community member. This statement is made for the specific purpose of informing the community member that the communication or conversation is being recorded, as required by law.~~

Commented [KK4]: Recommend removing this. The term "advisement" is not used anywhere else in this policy.

~~**5. CONSENT** – Consent to record shall be considered obtained when the recording party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is being recorded. The announcement also must be recorded.~~

Commented [KK5]: Recommend removing this. The term "consent" is not used anywhere else in this policy.

6.4. ACTIVATION – Any process that causes the body camera to transmit or store video and audio data in an active mode.

~~**7.5. BODY CAMERA TECHNICIANS** – Personnel certified or trained in the operational use and repair of BWCs, duplicating methods, storage and retrieval methods and procedures, and who have a working knowledge of video forensics and evidentiary procedures.~~

Commented [KK6]: Recommend replacing "Body Cameras" with "BWCs"

~~**8.6. RECORDED MEDIA** – Audio-video signals recorded and digitally stored on a storage device or portable media.~~

Commented [KK7]: Recommend revising to "Audio and/or video"

II. Using and Managing the BWC/ICV

~~BWC/ICV Equipment:~~

Maintenance

A Video Technician, in association with contracted vendors, shall be responsible for BWC system maintenance, upgrades, updates, and repairs.

System Management

The Camera System Coordinator is the overall system administrator responsible for system management, file retention, distribution, and deletion. The Camera System Coordinator will assist the King County Records and Public Records Disclosure Units with public records requests.

County Property

The BWC/ICV equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment are the sole property of King County. All disclosures and dissemination are only permitted for official department business. All other uses are prohibited. Only King County owned and issued BWC/ICV equipment may be used.

~~Use of Recordings~~

~~Recordings are the property of the Sheriff's Office. All disclosures and dissemination are only permitted for official department business. All other uses are prohibited.~~

~~BWC/ICV User Responsibilities:~~

Inspection

Deputies shall inspect their BWC/ICV equipment at the start of every shift. ~~If a deputy~~ discovers that the BWC/ICV equipment is not functioning, ~~he/shethey~~ will be responsible for documenting this in CAD, and will ensure that the equipment is turned over to the Video Technician for repair. Deputies will obtain a spare BWC/ICV from their sergeant when their BWC/ICV is with the Video Technician.

~~Location and Installation of BWC/ICV~~

~~Unless otherwise approved by division chief, the BWC shall be worn on the deputy's front torso in a fixed position.~~

~~Department Responsibilities~~

~~Department Camera Systems Issued to Members and Installed in Vehicles.~~ Marked patrol cars shall be equipped with ICV and deputies and sergeants who work primarily a uniformed patrol assignment shall be issued BWC. Department members issued a BWC are required to wear the BWC in compliance with this policy when working off-duty. Members in non-patrol

Commented [KK8]: Recommend removing since this section includes more than just equipment.

Commented [KK9]: Recommend removing to prevent redundancy. This is stated above.

Commented [KK10]: Recommend removing this header, as it suggests that user responsibilities are exclusively what's below.

Commented [KK11]: Recommend adding language to demonstrate what a fully functioning BWC/ICV looks like. For example, when the deputy activates the BWC/ICV, the indicator light should be green. If the light is not green, the deputy will....

Commented [KK12]: Recommend revising to "they"

Commented [KK13]: Recommend adding "Deputies shall not wear a BWC or use an ICV that is damaged or not functioning properly due to low battery charge, damage, malfunction, or memory exceeding capacity and shall notify their supervisor if one or more of these conditions exist."

Commented [KK14]: Recommend adding "Deputies shall ensure BWC/ICV battery is fully charged and operating properly at the beginning of their shift."

Commented [KK15]: Recommend revising to "Location and Installation of BWC/ICV"

Commented [KK16]: Recommend moving below.

Commented [KK17]: Recommend removing to prevent redundancy.

assignments are required to wear a BWC and/or have ICV in their vehicles when appropriate for their assignment.

Use of a pool BWC (if available) is required for CID and Major Crimes detectives interviewing or conducting suspect interrogations or arrests. Additionally, use of a pool BWC (if available) is required for Civil Unit Detectives serving civil processes or conducting evictions. If detectives or other non-uniformed assignment personnel are issued a BWC, they are required wear the BWC in compliance with this policy.

Commented [KK18]: Recommend adding a definition for "pool BWC" under "Definitions".

Unless otherwise approved by division chief, the BWC shall be worn on the deputy's front torso in a fixed position.

Commented [KK19]: Recommend revising to "...shall be securely attached to the front of the deputy's uniform and/or uniform equipment on their upper torso to facilitate recording."

Deputy Designation

The Sheriff or his/her/their designee shall determine which commissioned deputies will be required to use and operate the BWC and ICV in the performance of their official duties. Such designation shall not be arbitrary and the Department must treat all employees within a particular assignment the same in terms of whether they will be required to use and operate the BWC and/or the ICV.

Commented [KK20]: Recommend revising to "their"

~~Video Storage, Retention and Disclosure:~~

Commented [KK21]: Recommend removing to prevent redundancy

Video Retention

BWC/ICV recordings should be stored, retained, released, and deleted in accordance with state records retention and public records disclosure laws. Recordings shall be retained for a period consistent with the requirements outlined by state law, or KCSO's own records retention schedule if more stringent, but in no event for a period less than 60 days and shall be retained for at least 60 days in all circumstances. All videos recorded during training will be retained for seven days.

Commented [KK22]: Recommend revising to "Recordings shall be retained for a period consistent with the requirements outlined by state law, or KCSO's own records retention schedule if more stringent, and shall be retained for at least 60 days in all circumstances."

Public Disclosure Request

Members of the public who wish to view video shall be required to submit a public disclosure request, or in the event of litigation, seek the video in discovery. KCSO will only release video to the public in accordance with Washington's Public Records Act or pursuant to lawful process.

Review Prior to Public Disclosure

All recordings requested by the public shall first be reviewed prior to public release. Recordings shall be released according to public disclosure laws, rules and regulations. If disclosure of a sensitive nature which may unreasonably violate a person's privacy or sense of dignity, the recording shall be released if required by law or order of the court, and after appropriate and legally permitted redactions are made to preserve the involved person's right to privacy.

Prosecutor's Office and County Disclosure

Recordings shall be released and available to associated King County contract city prosecutors and the King County Prosecutor's Office for the purposes of reviewing or prosecuting criminal cases or traffic or civil infractions. Recordings shall also be released and available to the King County and associated contract cities to review or prosecute code enforcement matters or licensing violations, and to defend the contract city or county or its

employees in litigation. Recordings shall also be released and available to other criminal justice agencies as that term is defined in RCW 10.97.020.

~~Deputy Involved Shooting. It is the department's intent to release video related to a deputy involved shooting within a minimum of 48 hours after receiving a PRR. The Sheriff reserves the right to delay the release depending on investigative need or will release at his/her discretion for the best interests of the parties involved or the county; provided, the county shall comply with the Public Records Act.~~

Commented [HBR23]: LETCSA requires outside agency to make determination

GPS Associated with BWC/ICV

In the event GPS or other location capabilities (hereinafter "GPS") are available with the BWC or ICV, the GPS will not be monitored with the primary purpose being to impose discipline. Instead, if an employee is suspected of engaging in possible misconduct, the GPS data may be consulted as evidence in any resulting investigation. The Department shall not review such GPS data prior to the commencement of an investigation. In addition, no discipline will be imposed except in accordance with county policy and any applicable collective bargaining agreement.

BWC/ICV Training:

Initial Training

Prior to wearing and operating a BWC or operating a vehicle with an ICV, deputies are required to successfully complete Department training on the proper use of the equipment and procedures for uploading recorded video. This training will include:

1. Department policy on BWCs and ICVs.
2. System preparation and operation.
3. Procedures for operating equipment
4. Placement of the BWC.
5. Procedures for downloading and tagging recorded data.
6. Procedures for preparing and presenting digital evidence for court.
7. Scenario based exercises that replicate situations that deputies may encounter.

Refresher Training

1. Initial training in the use of body worn cameras and in-car video will be provided prior to requiring the use of this equipment.
2. Deputies shall attend refresher training on the BWC and ICV as directed by the department.

III. Recording with the BWC/ICV

~~Activation and Officer Safety~~

~~At no time is an officer expected to jeopardize his or her safety or that of the public in order to activate a BWC. Officers suddenly confronted with an unexpected event should react to~~

~~any potential threats and protect themselves and others first before they attempt to activate their BWCs.~~

Commented [KK24]: Recommend removing this section.

Activation of BWC/ICV upon Initial Involvement in Incident:

BWC. Subject to the exceptions contained in this policy ~~(and as public and deputy safety considerations permit),~~ deputies shall activate their BWC before civilian contact occurs for all calls for service, as well as for all enforcement, community caretaking, and investigative contacts with civilians, even when the event is out of view of the camera. Such contacts include but are not limited to: ~~If circumstances prevent activation at the start of an event, the deputy will activate the BWC as soon as practicable.~~ ~~In addition, and unless otherwise prohibited by this policy, deputies may, at their discretion, activate the BWC any time they determine it would be beneficial to capture a contact, an event or an activity.~~

~~Members who have been issued body worn cameras and in-car video should to use those systems to record the following:~~

Commented [KK25]: Recommend revising to:

1. Investigations and investigative contacts.
2. Traffic stops.
3. Vehicle pursuits.
4. Arrests and detentions.
5. Searches
6. Placing a suspect in a holding cell or checking on a suspect in a holding cell.
7. Removing a suspect from a holding cell.
8. Any other contact, event or activity where the member believes recording has value.

"BWC. Deputies shall activate their BWC before civilian contact occurs for all calls for service, as well as for all enforcement, community caretaking, and investigative contacts with civilians, even when the event is out of view of the camera. Such contacts include but are not limited to..."

Commented [KK26]: Recommend revising to:

ICV. ~~As public and deputy safety considerations permit,~~ deputies shall ensure that the ICV is activated when they respond to an incident, when civilians enter ~~the rear seat of~~ their vehicle, or when their emergency lights are activated; provided, in patrol vehicles, the ICV will automatically activate when vehicle emergency lights are activated or the rifle rack is opened. For the purposes of this section, the term "civilians" does not include individuals on ride-alongs or personnel working on vehicles. ~~If circumstances prevent activation at the start of an event, the deputy will activate the ICV as soon as practical.~~ ~~In addition, and unless otherwise prohibited by this policy, deputies may, at their discretion, activate the ICV any time they determine it would be beneficial to capture a contact, an event or an activity.~~ When stopping a vehicle or making contact at the scene of a response, ~~and as public and deputy safety considerations permit,~~ deputies will make reasonable efforts to position the vehicle to obtain useful recordings and capture critical evidence.

1. Investigations and investigative contacts
2. Dispatched calls (starting before the deputy arrives on the call to ensure adequate time to turn on cameras).
3. Traffic and Terry stops
4. On-view infractions and criminal activity
5. Vehicle eluding/pursuits
6. Arrests and detentions
7. Assessment or evaluation for a psychiatric detention.
8. Searches of vehicles, persons, or premises
9. Serving a search or arrest warrant
10. Placing a suspect in, removing a suspect from, or checking on a suspect in a holding cell.
11. Transporting any detained or arrested citizen.
12. Any other contact, event or activity where the member believes recording has value.
13. Upon the order of a higher-ranking member.

Activation Amnesty

No deputy will be subject to discipline for failing to activate a camera for any reason for the first month or 16 shifts, whichever occurs later, after they are assigned to wear a BWC or drive a vehicle equipped with an ICV. Evidence of a failure to activate a BWC or ICV during the amnesty period shall not be used or considered for performance evaluations or discipline after this amnesty period. ~~This amnesty period will apply again in the event a deputy, who previously was assigned to an assignment with a BWC or ICV, is reassigned to an assignment with a BWC or ICV after a period of six months or more in an assignment without a BWC or ICV.~~ ~~Deputies assigned to assignments without a BWC or ICV who work~~

Commented [KK27]: Recommend removing.

Commented [KK28]: Recommend removing.

Commented [KK29]: Recommend removing.

Commented [KK30]: Recommend removing. Redundant given above list.

Commented [KK31]: Recommend removing.

Commented [KK32]: Recommend revising to "This amnesty will apply again for a deputy who returns to a BWC or ICV assignment after leaving a BWC or ICV assignment for a non-BWC or non-ICV assignment for six months or more."

~~extra shifts on assignments with a BWC or ICV will not be subject to discipline for an unintentional failure to activate the BWC or ICV.~~

Commented [KK33]: Recommend removing this sentence.

Deactivation of BWC/ICV – Prohibitions and Exceptions to Recording:

Deactivation at Conclusion of Incident

Once activated, ~~and subject to all exceptions set forth throughout this policy,~~ the deputy shall not purposely turn off the camera until the deputy's involvement in the incident has concluded. ~~The deputy should cease recording when his or her part of the active investigation and the deputy leaves the scene. The deputy shall not purposefully turn off the camera until~~ ~~or~~ any transports related to the investigation, are completed, and there is little possibility that the deputy will have further contact with any person involved in the event.

~~For transports to a King County jail facility, the event concludes just before the employee enters the sally port of the facility.~~

~~For transports to medical facilities, the event concludes when the employee reaches the transport destination, and the employee is exiting the vehicle.~~

~~For transports to other locations, the event concludes when the employee reaches the transport destination, and the subject has been taken into the destination.~~

~~Temporary Deactivation of Audio Only. Audio recording contemporaneous with a BWC may be temporarily disabled for conversations with other deputies or persons not involved with the call. Pursuant to RCW 9.73.090(1) (c), audio recording contemporaneous with an ICV shall not be disabled when the ICV is activated.~~

Commented [KK34]: Recommend revising to:

"Once activated, the deputy shall not purposely turn off the camera until the deputy's involvement in the incident has concluded and the deputy leaves the scene. The deputy shall not purposefully turn off the camera until any transports related to the investigation are completed, and there is little possibility that the deputy will have further contact with any person involved in the event.

For transports to a King County jail facility, the event concludes just before the employee enters the sally port of the facility.

For transports to medical facilities, the event concludes when the employee reaches the transport destination, and the employee is exiting the vehicle.

For transports to other locations, the event concludes when the employee reaches the transport destination, and the subject has been taken into the destination."

Recording Prohibited

Officers and members of the Department are prohibited from using a Department BWC for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Unless specifically authorized by the Sheriff, the BWC/ICV shall not be used to record:

1. Anything not involved with official duties.
2. Communications with other police personnel while not on a call.
3. Communications with undercover deputies or confidential informants.
4. When on break or otherwise engaged in personal activities.
5. While in a jail unless for a direct law enforcement purpose.
6. While in the interiors of medical, mental health, counseling, or therapeutic facilities unless investigating a crime in progress (e.g. recording of an investigation of a crime committed at the facility, the drawing of blood at a facility following a DUI, the taking of a statement from a suspect or witness while in a facility, etc., would be permitted).

Commented [KK35]: Recommend removing this section.

7. While within the police precinct or substations, except while taking a report at the precinct or substation or ~~placing a suspect into one of the holding cells at the precinct. If so, announce as you enter the precinct or substation that you are recording. Turn off your recording after the suspect is placed and secured in the holding cell. Activate your recording each time you interact with the suspect in the cell until the suspect is released or transported to jail.~~

Commented [KK36]: Recommend revising to "...or interacting with a suspect in a holding cell as described under activation above."

Discretionary Recording

It is permissible under this Policy for deputies to exercise reasonable discretion to record or not record events in the following circumstances:

1. When the deputy is in a location where individuals have a reasonable expectation of privacy (such as a bathroom or locker-room) and the deputy is not there to effect an arrest or serve a warrant.
2. When respect for an individual's privacy or dignity outweighs the need to record an event. Such circumstances may include (without limitation) natural death scenes, death notifications, child or sexual assault victim interviews, and cultural or religious objections to being recorded.
3. ~~Sensitive communications such as matters of law enforcement intelligence or where the recording could hinder a criminal investigation.~~
4. ~~When the deputy has an articulable basis, based on the facts and circumstances of the particular situation, that recording would be unsafe or otherwise detrimental.~~

~~In rare circumstances units may perform specific tasks during their normal duties that make using the BWC and/or ICV impractical. Units may request exceptions to recording with BWC and/or ICV, for those specific tasks, from the Sheriff. Any exceptions granted are valid for a term not to exceed one year and may be renewed annually at the discretion of the Sheriff for good cause shown.~~

~~Units will request the exceptions by department memorandum outlining the specific tasks and good cause justification. All approvals will be for good cause, which will be set forth in writing and signed and dated expressly by the Sheriff. The Sheriff and affected section commanders will maintain a file of approved exceptions. Section commanders will provide a copy to the Office of Law Enforcement Oversight and may provide copies of the exceptions to the affected personnel under their command.~~

Notification of Recording

It is the opinion of the Washington State Attorney General that recording by police in a private residence is permissible.

Notification at Initial Contact. Upon initial contact with civilians, during a call for service, or an enforcement/investigative contact, deputies shall notify them, as soon as practicable, that they are being recorded and should state, "Do you want your identity, and/or communications, to remain confidential for public records purposes?." Whenever possible, this notification shall be recorded, and shall be repeated to any new arrivals during the contact when feasible.

Commented [KK37]: Recommend removing #3 and #4 and adding:

"In rare circumstances units may perform specific tasks during their normal duties that make using the BWC and/or ICV impractical. Units may request exceptions to recording with BWC and/or ICV, for those specific tasks, from the Sheriff. Any exceptions granted are valid for a term not to exceed one year and may be renewed annually at the discretion of the Sheriff for good cause shown."

Units will request the exceptions by department memorandum outlining the specific tasks and good cause justification. All approvals will be for good cause, which will be set forth in writing and signed and dated expressly by the Sheriff. The Sheriff and affected section commanders will maintain a file of approved exceptions. Section commanders will provide a copy to the Office of Law Enforcement Oversight and may provide copies of the exceptions to the affected personnel under their command."

Notification to Non-English Speakers. Deputies will ~~make reasonable efforts an effort~~ to communicate to non-English speakers, those with limited English proficiency, deaf persons, or persons hard of hearing that they are being recorded.

Commented [KK38]: Recommend revising to "...will make reasonable efforts to..."

Notification during Arrest. In accordance with RCW 9.73.090(1) (b), deputies shall again notify persons placed under arrest they are being recorded and verbally give Miranda warnings on the recording.

Notification Exceptions. In accordance with RCW 9.73.090(1) (c), deputies will not be required to inform the person being recorded if the person is being recorded under exigent circumstances. ~~Officers are not expected to jeopardize their safety by activating their BWC during an unexpected and reactionary threat or potential threat.~~

Commented [KK39]: Recommend removing this sentence.

Notification Not Satisfied. ~~Contact situations are inherently fluid. For example, multiple persons may enter and leave the scene of the contact. This fluidity may pose a challenge to the satisfaction of the requirements of this subsection. The Department shall consider the fluidity of the contact, along with any other relevant factors, prior to determining whether a violation of this subsection has occurred.~~

Commented [KK40]: Recommend revising to "Employees will make reasonable efforts to repeat the notification, if practical, for additional people that become involved in the recording."

Notification Objections. ~~If a community member objects to being recorded, the officer may elect to record the encounter despite the objection. Since~~ Conversations with police officers are not considered private under Washington law, there is no requirement that the officer turn off the camera for a community member who objects to having the interaction recorded. ~~If a community member objects to being recorded,~~ Officers can notify community members that the "Do not disclose box" on the case report can be marked if requested. ~~However, if~~ "Do not disclose" is marked, the case report may still be subject to release under public disclosure laws and redactions.

Commented [KK41]: Recommend revising to:

~~Inadvertent/Accidental Recording~~

~~A deputy may inadvertently/accidentally record themselves or others. These particular inadvertent/accidental recordings typically do not meet the statutory definition of a public record (as described in RCW 40.14.010) because they are not made "in connection with the transaction of public business" and as such may be deleted. The KCSO Video Technician shall be responsible for the deletion of recordings that do not need to be retained pursuant to the procedure set forth below. The following procedure has been established for videos that should be deleted because they are inadvertent or accidental:~~

"Notification Objections. Conversations with police officers are not considered private under Washington law, there is no requirement that the officer turn off the camera for a community member who objects to having the interaction recorded. If a community member objects to being recorded, officers can notify community members that the "Do not disclose box" on the case report can be marked if requested. However, if "Do not disclose" is marked, the case report may still be subject to release under public disclosure laws and redactions."

Notify Supervisor. ~~The recording deputy shall notify the on-duty patrol supervisor, via email, that:~~

- ~~1. An inadvertent/accidental recording was made; and~~
- ~~2. The recording date and time; and~~
- ~~3. A request that the recording be reviewed for deletion.~~

~~Supervisor Review. The on-duty patrol supervisor will review the recording and if he/she agrees that the video should be deleted shall direct the Video Technician to delete the subject footage. The presumption shall be that all inadvertent/accidental recordings shall be deleted.~~

~~Deletion. As soon as possible, the Video Technician shall delete the video as directed by the on-duty patrol supervisor.~~

~~Use of Non-Department Camera Systems~~

~~The use of non-department cameras systems is prohibited.~~

IV. Reviewing and Documenting BWC/ICV Recordings

Documentation of Recording in Police Reports

When the BWC or ICV is activated, deputies shall document in their case report, notice of infractions, and/or citations that a BWC and/or an ICV recording was made. If an deputy does not activate the BWC or ICV for any reason, ~~mutes the audio recording associated with a BWC or ICV,~~ or terminates the recording of the BWC or ICV for any reason, the deputy shall document in his or her case report the circumstances and reason(s) why this occurred.

Review of BWC/ICV Recordings

~~Review Own Recordings and Those of Other Deputies on Scene.~~ With the exception of the use of ~~deadly~~ force, a complaint of excessive force, and/or a community member complaint incident, deputies may view their own video recordings (and the recordings of other Deputies on scene) in accordance with this policy, and may request that other deputies or law enforcement personnel from other state or federal agencies review video for law enforcement purposes.— In addition, in accordance with the aforementioned exceptions, the deputy's attorney, KCSOG's Executive Board, and the KCSOG's attorney may view video recordings upon request. ~~After the deputy's initial statement is written in relation to a use of deadly force, alleged use of excessive force, or a community member complaint, and after an administrative or outside agency investigation is completed, deputies may view their own or other video recording footage related to the incident. After viewing their BWC footage, deputies may then, as needed, write a follow-up statement containing additional pertinent incident information.~~

In instances of alleged excessive or deadly force, until the completion of an administrative or outside agency investigation, footage of the incident shall be locked internally by KCSO. However, KCSO will release footage of such incidents per Washington State Public Disclosure or other related laws.

~~Review of Video~~

Other Relevant Recordings

Commented [KK42]: Recommend removing this section and complying with requirements under Section II: Video Retention, which requires at least a 60-day retention period for all video recordings.

Commented [KK43]: Recommend removing to prevent redundancy. Under "County Property" in Section II it states, "[o]nly King County owned and issued BWC/ICV equipment may be used."

Commented [KK44]: Recommend removing this to be consistent with the recommendation to remove the "temporary deactivation of audio only" section.

Commented [KK45]: Recommend removing to prevent redundancy.

Commented [KK46]: Recommend removing "deadly" and allow this to apply to all UOF incidents.

Commented [KK47]: Recommend revising to:

"No deputy may view any audio/video recordings prior to completing and submitting the appropriate report(s) and being interviewed by the appropriate investigative unit or prior to submitting a written statement in response to a minor complaint.¹ Once a deputy's report(s) has been submitted and approved and the deputy has been interviewed by the appropriate investigator, the investigator will show the deputy their recordings. The deputy may also be authorized to view other deputies' relevant recordings. This will occur prior to the conclusion of the interview process. The deputy will be given the opportunity to provide additional information to supplement their statement and may be asked additional questions by the investigators.

Before reviewing any BWC/ICV footage, deputies shall affirm in their incident report that they are unaware of any complaint related to the incident in the recording."

Commented [KK48]: Recommend removing to prevent redundancy.

Upon approval from the IIU investigator, a deputy who is participating in an official investigation such as an administrative investigation or criminal investigation may be authorized to view other deputies' relevant recordings.

~~Random Review Prohibited. BWC/ICV recordings will not be randomly reviewed for any reason.~~

Random Review for Discipline Prohibited

The purpose of this policy is *not* disciplinary in nature. The Department shall not randomly search through BWC/ICV recordings to discover reasons to impose discipline against deputies. If during the course of a legitimate viewing, a department member views misconduct which could lead to discipline, they are required to report it as they would in any other situation.

All Evidence to be Considered

The Department further acknowledges that video recordings provide only a two-dimensional perspective (with limited vantage points) of an incident. Consequently, the Department will never rely solely upon the review of video recordings as the basis for discipline against a deputy. Instead, the Department shall review and consider other evidence, if available (such as witness statements, deputy interviews, forensic analysis, documentary evidence, etc.) prior to imposing discipline against a deputy.

Downloading and Storage of BWC and ICV Recordings

Deputies shall download camera footage at least once per shift; provided, deputies shall download camera footage as soon as practicable after a serious incident or when storage capacity is reaching its limit. Any time a deputy records any portion of a contact that the deputy reasonably believes constitutes evidence in a criminal case, the deputy shall record the related case number and shall document the existence of the recording in the related case report. There may be circumstances where a deputy is unable to download camera footage during ~~his/her/their~~ shift. In such cases, the deputy will download camera footage at a work location prior to securing, or download footage to their at-home BWC docking station. If unforeseen circumstances preclude downloading to the at-home BWC docking station, deputies will ensure the camera footage is downloaded at the beginning of their next regular or overtime shift, whichever occurs first; provided, video footage shall be downloaded prior to going on days off. The exception to downloading footage at a time other than at the end of a shift shall not apply to footage associated with a case that results in the booking of a suspect into jail, unless the inability of the deputy to download the footage is beyond ~~his/her/their~~ control. Under certain circumstances, the Department may require video to be downloaded at times other than those specified herein, or may cause the video to be downloaded by someone other than the deputy to whom the camera was issued.

Preparing Written Reports

When preparing written reports and subject to the exceptions stated above, deputies may review, utilize, and reference their BWC/ICV recordings as a resource. Deputies shall not use the fact that a recording was made as a reason to write a less detailed report.

Public Safety Statement

Commented [KK49]: Recommend adding "...may be authorized to view other deputies' relevant recordings after being interviewed by the appropriate investigative unit. Once the deputy has been interviewed by the appropriate investigator, the investigator will show the deputy other relevant recordings. This will occur prior to the conclusion of the interview process. The member will be given the opportunity to provide additional information to supplement their statement and may be asked additional questions by the investigators."

Commented [KK50]: Recommend removing and implementing below recommendation allowing a designated auditor to randomly review recordings.

Commented [KK51]: Recommend revising to "their"

Commented [KK52]: Recommend revising to "their"

If a deputy is involved in a shooting, or other serious use of force, a deputy may be required to provide a public safety statement prior to having the opportunity to review BWC or ICV recordings.

Commented [KK53]: What is the intention behind including this language?

Viewer Application Entry

Any deputy viewing a video will manually make an entry in the viewer application at the beginning of the viewing session stating the purpose for viewing the video.

Commented [KK54]: Recommend revising to "shall".

Review, Retention and Distribution Prohibited

Deputies shall not review video for purposes not related to their job duties, and under no circumstances shall a deputy retain or distribute a recording for a non-law enforcement purpose.

Civilian Review Prohibited

Involved Civilians/Witnesses shall not be allowed to review the recordings at the scene.

Notification to Supervisor

Deputies are encouraged to inform their supervisor if the BWC/ICV may have recorded an incident that they reasonably believe may:

1. Result in a complaint.
2. Be used for training.
3. Anything else that is unusual or high profile.

Supervisor Responsibilities

Supervisors will be responsible for ensuring that assigned deputies use and maintain their BWC and ICV equipment in accordance with this policy. They will review all body camera video associated with a use of force report, a pursuit report, or when possible prior to taking any community member complaint. Supervisors shall only review video of their immediate subordinates if they are reviewing a use of force report, K-9 application, and a pursuit report and/or taking a community member complaint of another deputy. While reviewing video for authorized reasons, supervisors might find minor misconduct takes place. This misconduct could be obscene language, minor rudeness, or other conduct that is minor in nature. This misconduct should be reviewed and unless egregious or repeated, should be discussed with the deputy in a verbal counseling (not discipline) session.

Commented [KK55]: Recommend removing the sentence to prevent redundancy. This same language is used below.

Commented [KK56]: Recommend adding:
When a member does not activate or de-activate their BWC/ICV as required, supervisors and commanders shall determine if the delayed or non-activation was reasonable, based upon the circumstances. If the supervisor determines that the delay or non-activation was reasonable they shall document their justification in the deputy's report.

Review of Video

Review by Supervisors and Command Staff.

Other Reviewers

Commented [KK57]: Recommend removing these headers to prevent redundancy.

Supervisors, ~~and~~ command staff ~~or their designees,~~ ~~designated independent auditors, the Office of Law Enforcement Oversight, trainers, and investigators~~ ~~or their designees,~~ ~~are~~ ~~may~~ ~~be~~ authorized to conduct a review of relevant recordings ~~for the following purposes:~~

~~of their immediate chain of command;~~

- ~~W~~hen they are investigating a complaint of alleged misconduct;
- ~~W~~hen reviewing a report of meritorious conduct; as a part of a follow-up to corrective action, counseling, or during the period of a performance improvement or action plan;
- ~~F~~or the purposes of training ~~(with permission of the involved deputies);~~
- ~~F~~or the purposes of determining whether to approve the filing of charges;
- ~~F~~or the purposes of reviewing applications of force, the use of a canine, pursuits, or other instances in which reporting is mandatory;
- ~~F~~or a public disclosure request;
- ~~A~~udit and quality control/troubleshooting;
- ~~V~~ideo ~~may also be reviewed~~ ~~F~~or the purposes of conducting a deadly force review; a traffic accident, for the purposes of defending or prosecuting civil or criminal litigation, or for the purposes of a coroner's inquest.

~~A designated independent auditor shall randomly review BWC/ICV recordings on a monthly basis to ensure that the equipment is operating properly, and to assess:~~

- ~~Deputy performance and training needs;~~
- ~~Policy Compliance; and~~
- ~~Consistency between written reports and video files.~~

~~If, in the course of viewing BWC/ICV recordings, minor acts of misconduct unrelated to the original reason for viewing the recordings are discovered, they will not result in discipline or a sustained finding. However, such acts may result in a training referral or counseling, mentoring, and/or coaching and may be included in an employee's performance evaluation.~~

Immediate Possession of Video and Equipment

If a deputy is involved in a shooting or other serious use of force and/or is suspected of wrongdoing, the deputy's supervisor should take physical custody of the BWC/ICV until the independent review team can take custody. The supervisor will take custody of the BWC/ICV outside of public view. When the deputy uses deadly force, the investigating agency may supervise the downloading of the video.

V. Violations of Policy

Discipline

~~Only violations of sections C or D may result in discipline. Furthermore, an employee may only be subject to discipline for violating a provision of section C or D if:~~

Commented [KK58]: Recommend revising to:

"Other Reviewers

Supervisors, command staff or their designees, designated independent auditors, the Office of Law Enforcement Oversight, trainers, and investigators may be authorized to conduct a review of relevant recordings for the following purposes:

- When they are investigating a complaint of alleged misconduct;
- When reviewing a report of meritorious conduct; as a part of a follow-up to corrective action, counseling, or during the period of a performance improvement or action plan;
- For the purposes of training (with permission of the involved deputies);
- For the purposes of determining whether to approve the filing of charges;
- For the purposes of reviewing applications of force, the use of a canine, pursuits, or other instances in which reporting is mandatory;
- For a public disclosure request;
- Audit and quality control/troubleshooting;
- For the purposes of conducting a deadly force review; a traffic accident, for the purposes of defending or prosecuting civil or criminal litigation, or for the purposes of a coroner's inquest.

A designated independent auditor shall randomly review BWC/ICV recordings on a monthly basis to ensure that the equipment is operating properly, and to assess:

- Deputy performance and training needs;
- Policy Compliance; and
- Consistency between written reports and video files.

If, in the course of viewing BWC/ICV recordings, minor acts of misconduct unrelated to the original reason for viewing the recordings are discovered, they will not result in discipline or a sustained finding. However, such acts may result in a training referral or counseling, mentoring, and/or coaching and may be included in an employee's performance evaluation."

~~Intent to Violate. There is reasonable evidence an employee's violation of a provision of section C or D was willfully intended to circumvent the purpose of the particular provision; or~~

Commented [HBR59]: Needs review

~~Repeat Violations. There is reasonable evidence the employee has repeatedly committed violations of provisions of sections C or D.~~

Counseling

~~Notwithstanding the fact an employee may not be subject to discipline for minor misconduct (refer to supervisor responsibilities section), the employee may be subject to non-disciplinary counseling, and further non-compliance after such counseling may be used for the purposes of reviewing and rating performance.~~

Commented [KK60]: Recommend removing this section.